Saskatchewan
Municipal Affairs,
Culture and Housing

The Hearing Process

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Saskatchewan Municipal Affairs, Culture and Housing
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Introduction

A municipal board of revision is a quasi-judicial board, appointed by municipalities to ensure equity and fairness within the property assessment system.

The board's primary role is to hear appeals regarding alleged errors in the valuation and classification of properties. The board must ensure that each party to the appeal has a full opportunity to be fairly heard. Inherent in this role are the fundamental principles of "natural justice" and "doctrine of fairness".

"As a general rule tribunals (boards of revision) are considered to be masters of their own house. In the absence of specific rules laid down by statute or regulation, they control their own procedures subject to the proviso that they comply with the rules of fairness and, where they exercise judicial or quasi-judicial functions, the rules of natural justice."

These principles ensure that all parties affected by the decision of the board, have a full opportunity to be heard, and to be heard without prejudice or bias. The fundamental principles provide guidelines to ensure fair play during the hearing and decision making stages.

It is not necessary for the board to conduct its hearings as officially as a court, however, it is called upon to act judicially to ensure fairness and objectivity within the hearing process.

The board of revision's quasi-judicial function must ensure that property valuations for property tax assessment purposes are conducted in accordance with the rules for assessment as outlined in municipal legislation and the Saskatchewan Assessment Management Agency's (SAMA) assessment manuals.

This manual will provide a general overview of the board of revision hearing process. It will discuss what the hearings are to accomplish, the fundamental rules of natural justice, practical matters, the role of the chairperson, the role of the Saskatchewan Assessment Appeals Committee and when a decision may be subject to judicial review.

Underlying Principles

There are four basic principles that all board members should be aware of to ensure a board of revision hearing is conducted according to the rules of natural justice. Board of revision hearings:

- are to be used as a tool to collect relevant information;
- require structure;
- must be fair; and
- follow a form of hearing dictated by the mandate to be accomplished.

A Tool to Collect Information

As a tool to collect information, hearings represent an opportunity for board members to gather evidence and arguments that will allow it to decide the relevant facts and issues of an assessment appeal. A hearing is held to allow the board to access individuals with information necessary or useful in the accomplishment of its mandate to ensure equity and fairness exists within the assessment system.

From the appellants perspective, hearings permit access to an unbiased decision making body (board of revision) to present their reasons why they feel an error exists in their property assessment.

Hearings Require Structure

The board must at all times be aware of its purpose, where it is going and how should it get there. The board must be aware of its purpose and conduct itself accordingly. The chairperson controls the hearing process and ensures the hearing serves its intended purpose. Without a structured operating environment, the parties may lose confidence in the board and its decisions. The chair must establish and assume control over the proceedings, preferably before the hearing begins. Throughout the proceedings, the chair will have to be aware of its situation and assert its control when necessary.

Hearings Must be Fair

"All administrative bodies, no matter what their function, owe a duty of fairness to the regulated parties whose interest they must determine."

Hearings must be conducted in a manner that allows all parties to an appeal to present their case adequately and fairly. The procedures required for a hearing to be fair will vary from board to board, and will differ according to the circumstances of each particular hearing. However, there are two major principles which dictate procedural fairness in conducting hearings:

1) the right to be heard; and
2) the right to be heard by an unbiased decision-maker.

The board must understand an individual's right to appeal a property assessment, and if appealed in accordance with the appeal procedures, the fundamental right to present their reasons for the appeal before the board and be fully and fairly heard.

Rules of Natural Justice

During its proceedings, the board must be guided by the fundamental rules of fairness – the rules of natural justice. The rules of natural justice ensure that the parties to an appeal are provided with ample opportunities to:

1) know the case made against them;
2) dispute, correct, or contradict any evidence which is prejudicial to their position; and
3) present arguments and evidence to fully support their case.

Municipal legislation provides boards of revision with some direction on procedural fairness, such as the requirement for notifying the parties to the appeal of the hearing date, and the requirement for the prefiling of written materials if they are going to be used to present a case.

Practical Matters

Establishing the Hearing Procedure

How a hearing will be conducted is dictated by what the board is to accomplish. For municipalities the mandate of the board of revision is to make a determination as to whether the assessor has:

- properly valuated and classified properties, for assessment purposes,
- properly prepared the assessment roll, and
- sent out the proper notice of assessment.

The board must (when establishing its policies and procedures concerning the conduct of its hearing) adopt a procedural format that maintains its mandate. While the structure of the hearing does not necessarily have to be as that of a court, it must however, be formal enough to maintain a sense of order and fairness within the hearing process.

Providing procedural information to the parties to the appeal is the board's responsibility. The information provided is necessary to identify where and when the hearing is to take place. It also sets out the procedures to be followed leading up to and during the hearing.

The procedural information may be made available by using pamphlets, guidelines, hearing guides, etc. The board should make it publicly known that the documentation is available on request or for viewing at the municipal administration office.

After a hearing has initiated its proceedings and all introductions have been made, the appellant will begin tendering evidence before the board in support of his/her appeal.

All evidence tendered at a board hearing shall be ***viva voce*** (by voice). The board shall hear oral evidence from witnesses and the witnesses shall be examined ***viva voce*** (by voice) and in an open hearing.

A hearing will generally proceed as follows:

Opening Statements

The appellant and the respondent (SAMA) provide opening statements to the board. The opening statements provide the board with a brief introductory statement indicating the positions the appellant or respondent will argue during the hearing.

Entering Evidence

1. The appellant presents his/her evidence first. The first witness is called and the appellant begins tendering evidence through questions asked of the witness. Each witness must present his/her version of the facts independently.
2. Cross examination by respondent. Cross examination tests the reliability of the witness's statements, the other party may ask questions to clarify statements and assist in the presentation of their own case.
3. Re-examination by appellant. The re-examination should be limited to new areas of an argument resulting from questions raised during cross-examination.
4. Clarification questions by board.

This process continues until the appellant has no further witnesses.

It is now the respondent's opportunity to present his/her arguments before the board.

1. The respondent calls his/her first witness before the board.
2. The respondent presents his/her arguments through questions asked of his/her witness.
3. The witness is then cross-examined by the appellant.
4. Re-examination by respondent.
5. Clarification questions by board.

This process continues until the respondent has no further witnesses.

Summary of Evidence/Argument

When all evidence has been tendered, the appellant and respondent provide the board with a summary of the evidence presented. The appellant presents a summary first, and then the respondent. The appellant may present a rebuttal summary, only where the respondent has raised an issue which was not previously mentioned by the appellant.

All evidence presented at a hearing must be relevant to the appeal in question. That is, all witnesses, questions and arguments must either support or refute the reason for the appeal.

Although the hearing process does not have to be structured in the above manner, the board must take into account what it hopes to accomplish through its process, the nature of the appeal, and the needs of the parties to the appeal to structure a procedure that best meets these demands.

Presenting Evidence

The "rules of evidence" were developed for the courts to accomplish their mandate. The principles of evidence are a set of rules designed to ensure that decision makers base their decisions on relevant and reliable information.

The fact that the board may not be bound by the legal "rules of evidence" does not mean that "anything goes" respecting the material received during the hearing.

Generally, the rules of evidence exist to:

- establish a sound factual basis for decisions;
- ensure a proper balance between the harm in accepting evidence and the value in doing so; and
- maintain a fair and effective process.

As a practical matter, the board should be aware of the type of things which have to be proven for an appeal to be successful. This will greatly assist them in making a decision as to the admissibility of the evidence.

The rules of evidence are designed to address the following questions or concerns:

1. Is the material that the board is relying on to make its decision, sufficient to support that decision?

2. Is the information relevant? That is, it must be capable of assisting the board in reaching a conclusion about one of the grounds for the appeal.

3. How much can the board rely on the information provided to make its decision?

4. Is the information provided subject to the rules of exclusion?

The Exclusion Rules

These rules exclude relevant information on the basis of a competing and overriding interest which the lawmakers have decided must be protected, even if it means that you will be deprived of information that would have been helpful.

Some main exclusionary rules are:

a) protection of confidential relationships;
b) illegally obtained evidence;
c) settlement discussions;
d) off the record discussions;
e) state secrets;
f) statutory privilege;
g) the hearsay rule; and
h) opinion evidence.

Admissibility

The board must decide which evidence should be heard and, when making its decision, decide the weight to be given to the evidence. Evidence is either admissible or inadmissible; there is no middle ground. Information becomes evidence (admissible) if it meets three conditions:

a) it is relevant, that is it relates to the appeal being heard;
b) it is not excluded by some other principle of evidence (the exclusion rules); and
c) it is submitted to you through the proper channels.

Only information that is admissible can be used to make a decision. Using inadmissible evidence as the basis of a decision may lead to a further appeal of the decision.

When considering opinion evidence, that is, evidence based upon a witness's personal or expert experiences, care must be taken to determine its admissibility. Opinion evidence is based upon what a witness thinks, believes and infers from the facts in the appeal. It is not (usually) evidence of something the witness has seen firsthand. In this situation, the witness is using his/her own personal experiences to provide evidence to the board. Except for expert evidence, opinion evidence it not usually reliable because it is difficult for the board to determine its validity. For this reason most opinion evidence is inadmissible.

"The fundamental rule is that, if a person may be subjected to pains or penalties, or be exposed to prosecution or proceedings, or deprived of remedies or redress, or in some such way adversely affected by the investigation and report, then he should be told the case against him and be afforded a fair opportunity of answering it."

Providing Notice

Another practical matter to consider when conducting a hearing is providing notice of the date, time and place of the hearing. The main purpose of providing notice for hearings is to ensure those individuals with knowledge concerning the hearing will appear before the board. People who will be affected by an agency's decision will want to come to make certain the board has all the information they think is important. Thus, before a hearing can be held, proper notice must be given.

Municipal legislation requires a notice of the time and place of the board of revision hearing be served on the appellant at least 21 days before the sitting of the board of revision. The notice must be delivered either personally or by registered mail.

Although municipal legislation requires only the time and place of the hearing be forwarded to the appellant, there are certain accepted requirements respecting other items of information that should be included in the notice.

It is important to note that the notice is given to individuals to ensure that they are sufficiently aware of the date, time and subject matter of the board hearing so that they may prepare and be able to fully present their case.

There are two types of information to be conveyed by a proper notice: information going to the procedure of the matter (when, where and how the hearing is to proceed), and information going to the substance of the matter (what concern is actually being dealt with, what are the issues involved, etc.).

The following are suggested items of information that should be included in the notice of the board hearing:

- the name of the board;
- the purpose of the hearing;
- the statutory authority under which the hearing will be held;
- the time and place of the hearing;
- a statement indicating that if the party notified does not attend the hearing, the board may proceed in the party's absence and the board's decision shall be final and the appellant will not have the right to appeal the decision of the board;
- a statement informing the party of their right to be represented by an agent;
- a statement notifying the party that any written materials that are to be relied upon at the hearing, are to be filed with the board and served on the party defending the valuation or classification at least ten days prior to the hearing;
- a statement indicating that the hearing may be recorded at the request of the party, and that the cost of recording the hearing, or providing transcripts of the hearing may be charged against them; and
- a statement indicating where more information concerning the hearing and its proceedings may be obtained.

Failure to Give Proper Notice

Municipal legislation requires the secretary to the board to provide notice to all parties to an appeal. Failure to provide this mandatory notice within the legislated time frame will cause the hearing to be delayed until proper notice is given.

Where a defective notice has resulted in the board having heard matters of substance in the absence of a person entitled to notice of those matters, the hearing must be immediately adjourned and proper notice must be served on all parties to the appeal. When the hearing recommences, it must start over from the beginning.

If a hearing has been completed and it is discovered that a person should have had notice of the hearing, the hearing is nullified and must be started over. All parties to the appeal must be served with a new notice of the new hearing date. If the hearing is not recommenced then the results of the board decision may be challenged on appeal to the Assessment Appeals Committee or a court of law.

Practical Considerations

It is the board Secretary's duty to ensure proper notice is given to all affected parties. Failure to do so may result in unnecessary delays and added costs. There are some practical considerations respecting these notices:

- a copy or proof of service should be put in the appellant's file, this may require the filing of an affidavit of service certifying the setting out of the names and addresses to which the notices were sent, the type of mail used (must use registered), and the date notices were mailed. A copy of the notice given should be attached;

- if the notice was served personally, the person who gave the notice should file a statement or affidavit certifying how and to whom the notice was given, and the date it was given. A copy of the notice should be attached;

- prior to the hearing, the chairperson should review the file, to verify that all notices required to be given by the board were given; and

- concerns respecting the adequacy of the notice should be raised as early as possible in the proceedings. At the opening of the hearing the chairperson should ask if there are any concerns respecting the adequacy of notice. This should be done as early as possible in the proceedings in the event a serious problem with notice exists which may necessitate rescheduling the hearing.

Prefiling of Evidence

Any party that desires to use written materials at a hearing must file the materials with the board Secretary at least 10 days prior to the hearing.

The purpose of prefiling is to provide focus to the hearing, avoid wasting time and money, prevent surprises during the hearing, and enable parties to the appeal and the board to better prepare for the hearing.

Prefiling will avoid claims of surprise and the resulting requests for adjournments. In addition, complex, detailed and lengthy evidence can be more quickly put on the record, especially if all board members have an opportunity to review the material.

From the board members' perspective, they must keep an open mind when reviewing prefiled material and avoid making preliminary conclusions or views as to the merits of a matter. It is improper for the board to start a hearing by noting that the "evidence" on file appears to support one case or another unless it can be shown otherwise. This amounts to prejudgement and breaches the rules of natural justice.

Issuing a Summons

The board of revision may direct the secretary to issue a summons to any person to attend as a witness to the board of revision. A summons is used to compel individuals to appear before the hearing and provide evidence regarding an appeal. Although some of these witnesses will volunteer to

offer evidence, it is good practice for the board to issue a summons to ensure the individual does not have a change of heart and not appear at the hearing.

Form of Summons

The summons should contain the following:

- name of the board of revision;
- name of the person who is to receive the summons;
- a statement directing that person to attend the hearing at a specified date, time and place, in order to give evidence; and
- any other information required by legislation.

Serving the Summons

The summons must be personally served on the intended recipient.

Limits on Use of Summons

A summons should not be issued unless the board is satisfied that the attendance of the person is useful and necessary for the determination of an appeal.

Any party to the appeal may request the board to issue a summons and compel an individual to attend the hearing and provide evidence. However, the individual requesting the summons must show sufficient cause for the board to order a summons.

As well, the board is subject to geographical limitations in that it cannot issue a summons to any person residing outside of Saskatchewan.

Can the Board be Forced to Issue a Summons?

The issuance of a summons is at the discretion of the board. The parties to the appeal have no automatic right to summon any person they wish. The ability to secure a summons rests on the argument one can make that the evidence sought is necessary for a fair hearing. The more clearly it can be established that there is no other way to obtain this information, the more likely the board is to grant the request and issue a summons.

However, the board may be challenged through the Courts on its decision to deny a summons. The Courts have been willing to intervene in a board's decision to deny a summons only where it can be established that the denial was a clear breach of natural justice and proceeding in its absence would make the hearing a waste of time. In this instance the Courts may compel the board to issue a summons.

Excusing or Excluding Witnesses

The board has the discretionary authority to excuse a witness that has been issued a summons from attending the board hearing. The board may do so where it determines that the information to be provided is not necessary to determine the appeal.

A witness may make application to the board to vacate or cancel a summons and must do so at the beginning of the hearing or at the time they were to appear before the board. In this instance, the board may vacate the summons and excuse a witness from appearing provided that person has established a good and sufficient reason for not attending.

During the hearing witnesses are usually excluded from the proceedings other than when they are giving evidence. The purpose of this is to ensure the witness does not tailor his evidence based on the facts he has heard being presented before he speaks.

As well, the board may control or restrict the number of witnesses which may be called by a party. However, the board should not exercise this authority is such a way as to lead to unfairness. The board's discretion in this instance may be limited to excluding those witnesses that are providing repetitious or irrelevant evidence. The board cannot exclude a witness who has material and relevant information which has not been previously heard.

Use of Sworn Evidence

In some cases the board may wish to receive evidence from a witness under oath or affirmation. This request may be made where the board feels that an additional step is necessary to ensure the honesty and accuracy of the statements made.

The oath or affirmation serves to impress upon the witness the importance of the proceedings and involves a special duty to tell the truth. A statement made under oath or affirmation is less likely to be made thoughtlessly or carelessly.

Generally, the board places more weight on sworn evidence than unsworn evidence. The decision to place evidence under oath should be made as early as possible in the proceedings to avoid the situation where some evidence is received under oath and some not. The board does not want to find itself in the position of having unsworn evidence contradicted by sworn evidence.

Recording the Proceedings

Although the board is not required to record its proceedings, it is good practice to do so, especially if the board is dealing with a large volume of appeals. These recordings may be useful to the board members since most evidence presented at the hearings will be oral evidence.

Board members should take extensive notes during the hearing, especially if the proceedings are not being recorded, for reference when writing the decision.

The board is required to record its proceedings if, at least two day before the hearing date, it is requested to do so by any party to the appeal. The cost of recording the proceedings may be charged to the party that requested the recording.

Establishing Jurisdiction

From time to time the board may be challenged on whether it has the jurisdiction in a matter before it. These challenges are brought before the board in the form of a motion, which outlines the reasons for the motion and what is being sought. The following are examples of reasons that a person may challenge the board's jurisdiction:

- inadequate or insufficient notice of the hearing;
- failure to comply with any applicable legislation;
- failure to comply with any procedural order;
- alleged bias;
- the appeal is beyond the powers of the board to decide;
- a party has applied to a court to stop the proceedings.

A motion presented to the board should be dealt with as soon as possible. This may be practical where the issues of the motion can be easily considered and decided upon at the hearing. When issuing an immediate decision, the board should rise and privately discuss the matter and carefully draft its decision that will be read into the record. When making the decision, the board must provide reasons and cannot provide a decision "without reasons" or "with reasons to follow".

It is possible that the board will reserve its decision and proceed with the hearing. This will permit the board to fully consider the motion and carefully prepare its decision. It may not be practical for the board to reserve its decision in all cases, especially where the issue of the motion is central to the appeal.

Adjournments

The board may from time to time adjourn its proceedings because of unanticipated events. The power to adjourn is discretionary except where the appellant is unable to attend the hearing because they are required to attend to another appeal in another municipality on the same day. In this instance the board must grant the adjournment.

It is important to note that common sense as well as a sense of fairness guide the board when deciding whether an adjournment should or should not be granted.

Should the adjournment cause a delay in the proceedings such that the board cannot render its decision by the statutory deadline, the adjournment takes precedence. In this instance, the board will be required to request the Minister of Municipal Affairs, Culture and Housing to extend the decision deadline to accommodate the adjournment.

The following are some guidelines to follow when considering adjournments:

- the purpose for the adjournment (is it relevant to the proceedings, is it necessary for a fair hearing);
- has the participant seeking the adjournment acted in good faith and reasonably in attempting to avoid the necessity of adjourning;
- the position of the other participants and the reasonableness of their actions;
- the seriousness of the harm resulting if the adjournment is not granted;
- the seriousness of the harm resulting if the adjournment is granted (to the other participants, to the board, etc.)(this would include the length of the adjournment required);
- is there any way to compensate for any harm identified;
- how many adjournments has the participant seeking the adjournment been granted in the past;
- was the hearing to be preemptory, and if so, were the parties consulted in selecting the date and were they advised of the preemptory nature.

"The public expects from us the impartial application of our expertise as policy and legal analysts, without undue interference from the political process. Just as they would find unconscionable intervention by a government official or minister in a court case, so it would offend them fundamentally to perceive a collusive role for government in tribunal decision-making. The test for government thus becomes a simple one - if the request or practice or response would be inappropriate in dealing with a judge or chief justice, then it would be equally violative of a tribunal's integrity in dealing with an adjudicator or tribunal head."

Perception of Bias

The board of revision must hear and decide appeals independent of other municipal issues. The board must not only be independent, but must be seen as independent to protect the integrity of the appeal process.

It is a matter of public confidence in the appeal process. Not only must justice be done, it must be seen to be done. The board must have a fair consideration of the facts and must make decisions independent of any political or third party influence.

> ***"There must be circumstances from which a reasonable man would think it likely or probable that the justice or chairman, as the case may be, would, or did, favour one side unfairly at the expense of the other. The court will not enquire whether he did, in fact, favour one side unfairly. Suffice it that reasonable people might think he did. The reason is plain enough. Justice must be rooted in confidence; and confidence is destroyed when right-minded people go away thinking: 'The judge (chairman) was biased.'"***

Would a reasonable person, knowing the facts and the circumstances, have an apprehension that the decision maker would not be impartial with respect to the appeal.

For conflict of interest or pecuniary interest situations, a general rule of thumb is: if in doubt, the member should remove himself or herself from the hearing. As well, that member should avoid discussing the case with the other members.

Conducting a fair hearing ensures the integrity of the hearing process is protected. People appearing before the board will feel they have been given every opportunity to be heard before an independent decision making body.

From the Chairperson's Perspective

General Principles

The most basic principle of conducting a hearing is that each party is entitled to be fairly heard by the board of revision members.

The general principle of natural justice is that the hearing must be conducted so that each party to the hearing has a full opportunity to be heard as to its position, and a full opportunity to respond to adverse arguments and evidence.

Specifically, each party must be given adequate notice of the time and place of the hearing and the reasons for the appeal. This principle of natural justice reflects the notion that the parties to the appeal must know the case being made against them. As a result of this, each party will be able to fully prepare and present arguments and evidence supporting their respective cases or refute the case of the other party.

Another specific principle of natural justice is that the chairperson must ensure that each party to the appeal is given full opportunity to offer positive evidence and arguments in support of their position.

The chairperson must be independent, unbiased and evenhanded. From the appellant's position, a chairperson that has fairly heard all sides of the appeal and has considered the relevant facts of the case will have decided the appeal fairly and independently.

Each party must know at the end of the day, that the decision has been made by an independent and unbiased board, who has listened to, has heard all concerns and has weighed them accordingly.

It is the Chairperson's duty to ensure the rules and procedures of the board are adhered to during the hearing process.

Opening the Hearing

There is no specific legislation that instructs the Chairperson to give an opening statement at the onset of the hearing. However, these statements serve to provide the parties to the hearing with relevant information. The opening statement need not be lengthy, but should serve its purpose to familiarize the participants to be comfortable with the process and enable them to participate more fully.

In preparing an opening statement the following points should be considered:

- introduce yourself and the other panel members;
- introduce the subject of the hearing;
- note the statutory authority under which you will be operating;
- set out in summary form the purpose of the board;
- review the attendance, note the names of the parties and their representatives (verify spelling if necessary); and
- explain the general procedure to be followed during the proceedings.

It is important to set a tone of formality at the beginning of a hearing. This could be in the form of opening statements by the Chairperson. The statement would outline the procedures that the board has established concerning the conduct of its hearings. A more formal setting ensures that the parties will receive a fair hearing.

Relaxing the rules during the hearing to permit an unfamiliar party the opportunity to be fully heard will be much easier than trying to establish more formal rules during the proceedings.

Reassure all parties that the hearing does not need to be any more formal than necessary. Allow the parties every opportunity to present their side of the issue. Explain in your opening comments that some degree of formality is necessary in order to ensure that the matter is heard in an orderly and coherent manner.

The chair should inform the parties of the sequence in which they will be heard, the manner in which evidence and oral arguments will be received, and that each party will be given the opportunity to cross-examine the other's witnesses. As well, each party will be given the opportunity to present summaries of their arguments after all evidence has been heard.

During the Hearing

"They (board members) must avoid making enquiries in such an aggressive manner as to appear to be attempting to build a case for one side or the other. They must not act in a biased or unfair way. (board members) must not ask their questions in a bullying manner, or in an insensitive way which indicates clear bias."

It is not unusual for the chairperson or one of the board members to ask questions during the hearing. This is particularly true if the parties to the hearing are unrepresented, inexperienced and have a poor grasp of what, in law, is expected of them. Ultimately the board must ensure that the parties receive a fair hearing. Occasionally this requires some intervention by the board to clearly draw out all issues which may not have been addressed by either party.

Even though the board members have a public duty to inquire into the merits of the appeal, when doing so they should strive to maintain impartiality.

At the End

At the close of the hearing it is helpful to thank the parties for their participation. The parties should be informed of what is to happen next. If no decision is given at the time of the hearing, the chairperson should inform the participants of when and how they can expect to be informed of the board's written decision.

Saskatchewan Assessment Appeals Committee

The Assessment Appeals Committee's mandate is to determine if the board of revision had erred in its decision regarding an appeal. The committee must only review the board's decision for error, and if an error is found, the committee must do what the board should have done.

The committee is limited to correcting any material error of fact, of law or of assessment principles and practice as laid down in the Saskatchewan Assessment Manual.

The committee may also decide an appeal and complete the work of the board of revision where the board has omitted, neglected or refused to hear an appeal.

Judicial Review of Decisions

Generally judicial review occurs when a party having an interest in the decision of the board of revision complains that a substantive or procedural error has been committed, or anticipates an error or injustice in respect of the future proceedings of the board or complains that the board has refused to hear or determine a matter brought forward by that party.

Although the board's decision may be challenged from time to time, it should not bind the board by attempting to make all of its decision's judgement proof. The more effect a decision has on the rights and obligations of any individual, the more closely the board's procedures will be examined.

For the most part, as long as the board has applied its procedures correctly, and has allowed the rules of natural justice to prevail, the more likely the product of its decision making will be respected by the judiciary.

There are generally three errors that can give rise to judicial review:

a) The board did not have the jurisdiction to decide the matter before it;

b) The board has committed, or is likely to commit, a procedural error resulting from the manner in which it carries out its decision-making function; and/or

c) The board has committed a substantive error within the content of its decision, causing it to "lose" jurisdiction.

Lack of Jurisdiction

The board of revision must examine its statutory powers very carefully so that it may determine the boundaries of its legislated authority. Where the board has exceeded its jurisdiction its decision may be quashed, or the board may be compelled by court action "mandamus" (we command you) to providing a hearing that encompasses the rules of natural justice.

Procedural Error

A procedural error has occurred where the board did not properly and fairly deal with the matter brought before it. The decisions of the board may come under review where the board has breached the rules of natural justice.

The lack of impartiality or bias on the part of a board member or members is considered to be a procedural error and may be the subject of an appeal. Other procedural errors include the right to disclosure of the facts, the right to a hearing, the right to counsel, the application of evidentiary rules and the provision of reasons for the decision.

Procedural errors are characterized as jurisdictional, because the board is viewed as losing it jurisdiction by not properly applying the rules of natural justice.

Substantive Error

A substantive error refers to the situation where, the board has made a serious mistake in interpreting its powers under legislation, or in interpreting the facts of the hearing, or in interpreting the law, and then renders a decision which any reasonable person would say is unreasonable.

Conclusion

The conduct of the hearing is the most important element in the hearing process. The parties to the appeal must be provided with a full opportunity to present their evidence and their arguments must be fully heard. These are important elements of the principles of natural justice.

All hearings must encompass the principles of natural justice, failure to do so leaves the decision of the board subject to challenge. In establishing its rules and procedures the board should ensure that the principles of natural justice are upheld.

The board has complete authority over how its proceedings are to be conducted. This authority must be used judiciously. Keep in mind the question "what would a reasonable person do?"

The Chairperson ensures the hearing is conducted fairly. The Chairperson must ensure that each party fully presents their case. As well, the Chairperson ensures adherence to the rules and procedures set out by the board.

The board cannot dismiss an appeal without reasons or without a full consideration of the evidence and argument presented to it. If it should, the Assessment Appeals Committee will be required to hear the appeal. The fact that the Committee is hearing the appeal instead of the board could result in the board being charged with the costs of the appeal. The Committee's other function is to determine if the board erred in its decision making.

Judicial review of decisions will normally result when the board breaches a rule of natural justice.

The fact that a board's decision may be challenged should not impair the board's ability to hear and decide an appeal in a fair and objective manner.

SOURCES

MaCaulay, Robert W., Q.C. and James L.H. Sprague. "Practice and Procedure before Administrative Tribunals." Toronto, Canada: Carswell Thomson Professional Publishing, 1996.

Appendix A

Municipality of Somewhere
Board of Revision

NOTICE OF HEARING

IN THE MATTER OF Appeal No. _____, *(civic address or legal description)*

AND IN THE MATTER of a notice of appeal filed under (Section 251 of *The Urban Municipality Act, 1984,* or Section 303 of *The Rural Municipality Act, 1989).*

TAKE NOTICE that pursuant to (subsection 253(1) of *The Urban Municipality Act, 1984*, or clause 305(1)(c) of *The Rural Municipality Act, 1989)* you are hereby notified that the Board of Revision will hold a hearing at the time and place specified below to determine if an error exists in ***(the valuation AND/OR classification of the subject land, improvements, or business AND/OR the preparation or the content of the assessment roll AND/OR content of the notice of assessment,*** *use only those statement(s) that correspond to the matter that the person is appealing).*

Location and time of hearing:

Date: **Time:** **Location:**

TAKE NOTE THAT:

You may appoint an agent to represent you and present your evidence and arguments at the hearing.

If you or your agent fail to appear before the Board of Revision at the date and time specified, the Board may proceed with the hearing in your absence. The Board's decision will be final and you will not be entitled to further appeal the decision.

Where you are required to attend more than one Board of Revision hearing in more than one municipality on the same day, you may apply to the Board to have your hearing rescheduled and the Board shall reschedule the hearing.

Any written materials which you wish to make use of at the hearing, must be filed with the Board secretary at least 10 days prior to the hearing date. A copy of the material filed with the Board must also be filed with the other parties to the appeal. No further information may be filed at a later date or at the hearing without leave of the Board. In the event the Board requires further information, you will be notified in writing.

Sample

Any party to the appeal may request the hearing or a part of the hearing or the testimony of a witness be recorded. This request must be made to the Board Secretary at least two days before the hearing date. The costs of providing the recording or producing transcripts of the recording may be charged against the party making the request.

After considering all evidence submitted by all parties, the Board will issue its decision with reasons, in writing. A copy of the decision will be mailed to all participants.

More information concerning the hearing and its procedures may be obtained from the Secretary to the Board of Revision at the Somewhere Municipal Office, 1211 15th St. W. Somewhere, Saskatchewan. S0W W4W

Dated at the Municipality of Somewhere, this _____ day of _____, 1998.

_____

Joan Boarder
Board Secretary

Sample

Appendix B

SUMMONS

(Section 308, *The Rural Municipality Act, 1989*)
(Section 255, *The Urban Municipality Act, 1984*)

SUMMONS TO A WITNESS BEFORE *(name of Board of Revision)*

TO: *(name and address of witness)*

YOU ARE HEREBY REQUIRED TO APPEAR BEFORE THE *(name of Board of Revision)* AT *(location of hearing)* ON *(day of week)*, THE _____ DAY OF _____ , _____ AT *(state time of hearing)* TO SERVE AS A WITNESS REGARDING THE NOTICE OF APPEAL FILED BY *(name of appellant)*, WITH RESPECT TO *(description of property on which the appeal is lodged)*.

ANY PERSON WHO FAILS TO ATTEND AT THE TIME AND PLACE MENTIONED OR REFUSES TO BE SWORN IF REQUIRED TO GIVE EVIDENCE IS GUILTY OF AN OFFENCE AGAINST (***The Rural Municipality Act, 1989 or The Urban Municipality Act, 1984)***

Date:_____

(Name of Board of Revision)

_____
Secretary to the Board

NOTE: You may be compensated for your attendance in accordance with the *(name of municipality)* council policy.

Sample